

# Absolute prohibitions on pharmacy advertising are contrary to EU law

The Court of Justice holds that a total and absolute prohibition on advertising for pharmacies is contrary to the Directive on electronic commerce (Directive 2000/31/EC) and to Articles 49 and 56 of the Treaty on the Functioning of the European Union on the freedom of establishment and the freedom to provide services, respectively.

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### 1. Introduction

Following the judgment of the Court of Justice of 27 February 2025, *Apothekerkammer Nordrhein v DocMorris NV*, C-517/23, in which the Court of Justice established a series of parameters to distinguish between advertising of medicinal products and advertising for pharmacies, and in which it admitted that, in certain situations, the legislation of Member States may prohibit the promotion of pharmacies, the Luxembourg Court has once again

addressed the issue of pharmacy advertising in its recent judgment of 19 June 2025 (*European Commission v Republic of Poland*, C-200/24, ECLI:EU:C:2025:459). The importance of this new judgment lies in the fact that the Court of Justice examines whether the introduction by national legislation of a total prohibition on advertising for pharmacies complies with EU law.

The question was referred to the court in connection with the provision contained

in the Polish Pharmaceutical Act, which provides (Article 94(a)(1)) that “[a]dvertising for pharmacies and pharmaceutical outlets and the activities thereof shall be prohibited”, although it adds that “[i]nformation relating to the location and opening hours of pharmacies or pharmaceutical outlets shall not constitute advertising”. Specifically, the court is asked to determine whether such a prohibition complies with the Directive on electronic commerce (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market), as well as with Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU) on the freedom of establishment and the freedom to provide services, respectively.

In fact, according to Article 8(1) of the Directive on electronic commerce, “Member States shall ensure that the use of commercial communications which are part of, or constitute, an information society service provided by a member of a regulated profession is permitted subject to compliance with the professional rules regarding, in particular, the independence, dignity and honour of the profession, professional secrecy and fairness towards clients and other members of the profession”. In turn, according to Article 49 TFEU, “restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited”, with freedom of establishment including “the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies”. And, in accordance with Article 56 of the aforementioned treaty, “re-

strictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended”.

In the opinion of the European Commission, the aforementioned Polish legislation constitutes an infringement of these provisions of Union law, while the Republic of Poland contends, among other things, that the prohibition concerns solely those messages the explicit aim of which is to increase the sale of products on offer in pharmacies, and that it is a prohibition that pursues the general objective of ensuring a high level of protection of public health. It further claims that a very large proportion of the medical services provided by pharmacists are not part of the activities of pharmacies or pharmaceutical outlets, and are therefore not concerned by the prohibition at issue.

## **2. The absolute prohibition on pharmacy advertising is contrary to the general principle of allowing commercial communications by a regulated profession**

The Court of Justice points out that Article 8(1) of the Directive on electronic commerce lays down the principle that Member States are to ensure that the use of commercial communications which are part of an information society service provided by a member of a regulated profession, or which constitutes such a service, is authorised. On that basis, it declares that, since Article 8(1) of Directive 2000/31 covers all members of a regulated profession, national law cannot be regarded as being compatible with that provision on the

sole ground that certain members of the regulated profession in question are not subject to the prohibition on advertising laid down by that law. Were that indeed the case, the Member States could circumvent that provision by way of prohibitions that do not cover a marginal series of activities exercised by members of a regulated profession. Therefore, the Court of Justice does not accept Poland's claim that some professionals who provide services other than those offered in a pharmacy are not covered by the prohibition.

Nor does the court accept Poland's claim that the Directive on electronic commerce is not infringed because pharmacists may sell non-prescription medicinal products at a distance and provide customers with information on the prices and delivery methods for such products. According to the Court of Justice, although this is the case, under Polish law "pharmacies are nevertheless not authorised to advertise their distance sales service", thereby infringing Article 8(1) of the Directive on electronic commerce.

### **3. The total prohibition on advertising for pharmacies is contrary to the principles of freedom of establishment and freedom to provide services**

3.1. Since the prohibition on pharmacy advertising contained in the Polish legal provision referred to above does not only concern advertising carried out in the context of an information society service, the Court of Justice also examines whether the prohibition is contrary to the principles of freedom of establishment and freedom to

provide services, laid down in Articles 49 and 56 TFEU.

The Court of Justice refers to its previous case law (judgments of 8 June 2023, *Fastweb*, C-468/20, EU:C:2023:447, and of 4 May 2017, *Vanderborght*, C-339/15, EU:C:2017:335] to recall that: 1) all measures that prohibit, impede or render less attractive the exercise of those freedoms guaranteed by Articles 49 and 56 TFEU must be regarded as restrictions on the freedom of establishment and/or the freedom to provide services; 2) the concept of restriction covers measures taken by a Member State which, although applicable without distinction, affect access to the market for economic operators from other Member States; and 3) national legislation which imposes a general and absolute prohibition of any advertising for a certain activity is liable to restrict the possibility, for the persons carrying on that activity, of making themselves known to their potential clientèle and of promoting the services which they offer to their clientèle. Consequently, that national legislation must be regarded as a restriction on the freedom to provide services. On that basis, the Court of Justice concludes that the Polish legislation constitutes such a case and that, therefore, the freedom to provide services is restricted.

Furthermore, in so far as the prohibition on advertising constitutes a further obstacle to be surmounted for operators from other Member States who wish to establish a pharmacy in Poland, it also restricts freedom of establishment.

3.2. Having established that there is a restriction on the freedom to provide services and the freedom of establishment, the court examines whether that restriction can be justified, given that, according to its previous case law, restrictions which are justified by an overriding reason relating to the public interest and which comply with the principle of proportionality may be permitted (judgments of 18 June 2019, *Austria v Germany*, C-591/17, EU:C:2019:504, and of 6 October 2020, *Commission v Hungary* (Higher

between pharmacies should not be based on advertising, but rather on the maximum quality of the services provided and the reputation acquired thereby.

In the Court of Justice's view, pharmacy advertising "may benefit individuals who are likely to purchase medicinal products, inasmuch as it allows them to be informed of lower prices or additional services offered by a specific pharmacy. Thus, further to such advertising, those individuals may decide

to purchase their usual medicinal products from a pharmacy other than that where they were customers before, without that giving rise to an increase in the quantities of medicinal products purchased by those individuals".

By contrast, the prohibition on such advertising "runs the risk of favouring pharmacies that have been present on the market for many years, to the detriment of those wishing to enter that market and offer more or better quality services".

Furthermore, the court rejects the argument that the prohibition on promoting pharmacies can be based on the prohibition on encouraging the irrational use of medicines (Article 87(3) of Directive 2001/83/EC). This is because, by way of that article of Directive 2001/83/EC, the EU legislature does not prohibit all advertising of medicinal products, but "intended [...] to permit the promotion of medicinal products without, however, encouraging the overconsumption thereof", providing that the advertising of a

## ***Pharmacy advertising "may benefit individuals who are likely to purchase medicinal products"***

*education*), C-66/18, EU:C:2020:792], provided that the State which passed the legislation in demonstrates that those cumulative conditions are met.

The Court of Justice rejects Poland's claims that there are public health reasons justifying such restrictions, since pharmacy customers are a category of consumers particularly susceptible to advertising, who should be protected against techniques intended to incite them to make more purchases (including non-prescription medicinal products and food supplements). According to the Republic of Poland, the prohibition on promoting pharmacies is linked to the prohibition on encouraging the irrational use of medicinal products, and the protection of health requires that competition

## *The legal doctrine established by the Court of Justice will have a significant impact on Spanish praxis.*

medicinal product is to encourage the rational use of the medicinal product, by presenting it objectively and without exaggerating its properties, and is not to be misleading.

In short, the Court of Justice concludes that the Republic of Poland has failed to demonstrate that the restrictions on freedom of establishment and the freedom to provide services stemming from that provision are appropriate for ensuring that the objective of protection of public health, consisting in combating the overconsumption of medicinal products, is attained. In any event, that objective can be pursued by measures that are less restrictive than the total prohibition on such advertising.

Finally, the Court also concludes that the restriction on freedom of establishment and freedom to provide services cannot be justified on the grounds of protecting the independence of the profession of pharmacist, inter alia because “[t]he prohibition on any form of advertising for pharmacies, pharmaceutical outlets and the activities thereof is not such as to protect pharmacists from the pressures that the proprietors of pharmacies might exert in order to influence the way in which the pharmacists advise their customers. Such pressure may remain irrespec-

tive of whether or not there is advertising for those pharmacies”. In any event, a general and absolute prohibi-

tion on advertising for pharmacies is not a proportionate measure, since “[a] less restrictive measure could consist in authorising such advertising in compliance with conditions which would serve to protect the professional ethics of pharmacists by supervising, closely if necessary, the form and manner which such advertising may have”.

### **4. The ramifications of the judgment for Spain**

The legal doctrine established by the Court of Justice is likely to have a significant impact on Spanish praxis. In Spain, there is no uniformity in regional legislation on advertising for pharmacies. While some regions do not regulate pharmacy advertising (as is the case in Catalonia and the Basque Country), in others it is permitted (as is the case in Madrid under the Pharmaceutical Regulation and Care (Madrid Region) Act 13/2022 of 21 December), and in a third group it is prohibited. This third group of regions includes, for example, Aragon, the Canary Islands and Galicia, which prohibit advertising for pharmacies, in some cases with the exception of packaging or wrapping for dispensed products. See the Pharmaceutical Regulation (Aragon) Act 4/1999 of 25 March, the Pharmaceutical Regulation (Canary Islands) Act 4/2005 of 13 July and the Pharmaceutical Regulation (Galicia) Act 3/2019 of 2 July.